IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 462 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PUNJABHAI VISABHAI RAVAL - Appellant(s)
Versus
PRAVINSINH SHIVUBHA PARMAR & 2 - Defendant(s)

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Appearance :
MR KIRAN MEHTA for MR CG MEHTA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR SB VAKIL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged judgement and award dated 22.09.1980 passed by the Motor Accident Claims Tribunal-III (Special) Narol in M.A.C. No. 36 of 1980 whereby the same was partly allowed and the original opponent Nos. 2 and 3 were directed to pay a sum of Rs. 2,500/- to the original applicant by way of compensation.

2. The short facts of the present case are that on

21.01.1979 at about 7 o'clock the appellant went to Zezra to Viramgam with his camel cart having goods loaded in it. When he reached village Mubarak at about 11.00 p.m. Original opponent No. 1 came driving motor truck bearing registration No. G.T.E. 3431 in full speed from Surendranagar side i.e. Behind the camel cart and dashed the truck with the camel cart. As a result of this the camel cart fell down and damaged. The camel was also injured. Therefore he claimed a sum of Rs. 16,800/- by way of compensation.

3. Learned advocate for the appellant has submitted that the Tribunal has grossly erred in finding that the appellant had an earning of Rs. 500/- p.m. Though there is reliable and cogent evidence of the applicant supported by the independent witness Nanjibhai on the point of income the same was not considered by the appellant. He further submitted that Tribunal has grossly erred in observing that the applicant could get the camel cart on hire and could pay it till he got his camel cart repaired, though there is no evidence on record that the camel carts were available on hire.

4. Learned advocate for the respondent has submitted that judgement and award passed by the Tribunal is just and proper and no interference is required.

5. I have gone through the judgement and award of the Tribunal. While passing the judgement the Tribunal has found and observed that the applicant is doing carting business with the help of the camel cart, but he has not produced any documentary evidence to prove that fact. No doubt, business man Nanjibhai Zikabhai has tried to support the version of the appellant saying that the appellant was carrying his goods on hire charges at a rate of Rs.1/- per month and in one trip he carries 50 Maund goods, and on every third day he makes one trip of Viramgam, but in support of that version he has not produced his account book or any documentary evidence. Moreover, it is also possible that such carting business might not be continued for the whole month. He may or may not get work on some day. So there cannot be a continuous income. Therefore

Tribunal has rightly awarded the income of the appellant as Rs. 500/- per month.

Further the damage caused to the cart can be repaired and till then another camel cart could have been obtained on rental charges. So except for a reasonable period for getting the camel cart repaired, the appellant cannot get any special damages. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*